

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,  
Plaintiff,

v.

WILLIE R. MCCLAIN,  
Defendant.

No. CR-03-0239-FVS

ORDER DENYING DEFENDANT'S  
MOTION FOR SENTENCE  
REDUCTION PURSUANT TO  
18 U.S.C. § 3582

**THIS MATTER** came before the Court on Defendant's motion for a reduction of his sentence pursuant to 18 U.S.C. § 3582(c)(2). Defendant is proceeding pro se. Plaintiff is represented by Pamela J. Byerly and Aine Ahmed.

**BACKGROUND**

On November 18, 2003, a grand jury returned an indictment charging Defendant with Distribution of 5 Grams or More of Cocaine Base (Counts 1-4), Possession With Intent to Distribute 50 Grams or More of Cocaine Base (Count 5) and Possession of a Firearm in Furtherance of a Drug Trafficking Crime (Count 6). (ECF No. 11). On February 18, 2004, the Government filed an Information To Establish Prior Conviction to increase Defendant's sentence based on 21 U.S.C. § 851.<sup>1</sup> (ECF No. 21). On May 26, 2004, following a three-day trial, a

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<sup>1</sup>The Government alleged that on or about January 23, 1991, in the Municipal Court of Los Angeles, California, Defendant was convicted of the offense of Possession for Sale of a Controlled Substance, a drug felony. (ECF No. 21).

1 jury found Defendant guilty on all six counts in the indictment. (ECF  
2 No. 69). Prior to sentencing, Defendant challenged the pre-sentence  
3 report, arguing that inclusion of his prior conviction under Section  
4 851 amounted to a sentencing enhancement in violation of *Apprendi* and  
5 *Blakely*. The Court disagreed and sentenced Defendant to the mandated  
6 240 months confinement on Count 5, pursuant to Section 851's mandatory  
7 statutory minimum for drug convictions involving 50 grams or more of  
8 crack-cocaine, to run concurrent with a term of 168 months on Counts  
9 1-4. The Court also imposed a mandatory 60-month term of confinement  
10 for the firearm enhancement (Count 6), to run consecutive with the  
11 drug offenses, for a total 300 month sentence. (ECF No. 83, 84).  
12 Judgment was entered on November 17, 2004. (ECF No. 88). The Ninth  
13 Circuit affirmed Defendant's conviction and sentence on December 22,  
2005. (ECF No. 110).

14 On March 14, 2007, Defendant submitted a motion to vacate, set  
15 aside, or correct his sentence pursuant to 28 U.S.C. § 2255 (ECF No.  
16 114), and, on August 21, 2007, Defendant moved to amend the Section  
17 2255 petition (ECF No. 117). The motion to amend was granted by the  
18 Court on November 7, 2008. (ECF No. 121). On June 30, 2009, the  
19 Court denied Defendant's Section 2255 petition (ECF No. 130).

20 On January 20, 2011, Defendant filed a petition pursuant to 28  
21 U.S.C. § 2241 in the District of Oregon. (11-CV-0139-FVS; ECF No. 2).  
22 The District of Oregon, however, construed the petition as a request  
23 pursuant to Section 2255 and transferred Defendant's case back to this  
24 Court. On July 11, 2011, the Court dismissed Defendant's Section 2241  
25 petition for lack of jurisdiction. (11-CV-0139-FVS; ECF No. 13).

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1 On October 29, 2012, Defendant filed a motion for leave to file a  
2 second or successive petition under 28 U.S.C. § 2255. (ECF No. 143).  
3 The Court denied the motion on November 9, 2012. (ECF No. 146).

4 On March 8, 2013, Defendant filed the instant motion for a  
5 sentence reduction. (ECF No. 147). Defendant requests a sentence  
6 reduction pursuant to 18 U.S.C. § 3582(c)(2) and *Dorsey v. United*  
7 *States*, 132 S.Ct. 2321 (June 21, 2012).

#### 8 DISCUSSION

9 18 U.S.C. § 3582(c)(2) provides as follows:

10 [I]n the case of a defendant who has been sentenced to a term of  
11 imprisonment based on a sentencing range that has subsequently  
12 been lowered by the Sentencing Commission pursuant to 28 U.S.C.  
13 994(o), upon motion of the defendant or the Director of the  
14 Bureau of Prisons, or on its own motion, the court may reduce the  
term of imprisonment, after considering the factors set forth in  
section 3553(a) to the extent that they are applicable, if such a  
reduction is consistent with applicable policy statements issued  
by the Sentencing Commission.

15 The language of Section 3582(c)(2) provides the Court with  
16 authorization to reduce a sentence where the applicable "sentencing  
17 range" has been subsequently lowered.

18 Because Defendant was given a statutory minimum sentence in this  
19 case, there is no "sentencing range" which can be lowered by the  
20 Sentencing Commission. Consequently, Section 3582(c)(2) does not  
21 confer jurisdiction on this Court to resentence Defendant. *U.S. v.*  
22 *Jackson*, 577 F.3d 1032, 1035-1036 (9th Cir. 2009) (a defendant  
23 sentenced pursuant to a mandatory minimum, and not a sentencing  
24 guideline range, is ineligible for a sentence reduction under §  
3582(c)(2)).

25 With regard to Defendant's *Dorsey* argument, the Supreme Court in  
26 that case held that the more lenient penalties of the Fair Sentencing

1 Act of 2010, which reduced the crack-to-powder cocaine disparity from  
2 100-to-1 to 18-to-1,<sup>2</sup> applied to offenders who committed a crack  
3 cocaine crime before the effective date of the Act, August 3, 2010,  
4 but who were sentenced after that date. Defendant was sentenced in  
5 October 2004, well before the effective date of the Fair Sentencing  
6 Act of 2010. Therefore, *Dorsey* does not apply to Defendant.

7 Defendant is serving a statutory mandatory minimum sentence. A  
8 reduction of Defendant's sentence is thus not authorized under Section  
9 3582(c)(2). Moreover, the *Dorsey* decision is inapplicable to  
10 Defendant because it addresses only those crack cocaine offenders who  
11 were sentenced after August 3, 2010. Accordingly, the Court  
12 determines that Defendant's motion to modify his sentence pursuant to  
13 18 U.S.C. § 3582(c)(2) (**ECF No. 147**) is **DENIED**.

14 **IT IS SO ORDERED.** The District Court Executive is hereby  
15 directed to enter this order and furnish copies to Defendant and to  
16 counsel for the United States.

17 DATED this 21st day of March, 2013.

18 S/Fred Van Sickle  
19 Fred Van Sickle  
20 Senior United States District Judge

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22 <sup>2</sup>In 2010, Congress enacted the Fair Sentencing Act into law.  
23 The Act increased the drug amounts triggering mandatory minimums  
24 for crack cocaine trafficking offenses. The change had the  
25 effect of lowering the 100-to-1 crack-to-powder ratio to 18-to-1.  
26 The Fair Sentencing Act took effect on August 3, 2010. The  
Commission promulgated conforming emergency Guidelines amendments  
that became effective on November 1, 2010. 75 Fed.Reg. 66188  
(2010). A permanent version of those Guidelines amendments took  
effect on November 1, 2011. *Dorsey*, 132 S.Ct. at 2329.